

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

1 JOVANNY ACUNA-MARTINEZ,

2 Plaintiff,

3 v.

4 MASON, et al.,

5 Defendants.

6 Case No. 2:23-cv-01390-ART-MDC

7 SCREENING ORDER ON  
FIRST AMENDED COMPLAINT  
(ECF No. 18)

8 Plaintiff, who is no longer incarcerated, has submitted a first amended civil  
9 rights complaint pursuant to 42 U.S.C. § 1983 (“FAC”), and has filed an  
10 application to proceed *in forma pauperis* for inmates, a motion to file an amended  
11 complaint, and a motion for pro se litigant to file electronically. (ECF Nos. 4, 18,  
12 19, 20). The Court grants Plaintiff’s motion to amend his complaint (ECF No.  
13 19) and finds that the FAC (ECF No. 18) is the operative complaint in this case.  
14 The Court denies the application to proceed *in forma pauperis* for inmates (ECF  
15 No. 4) as moot and directs Plaintiff to file a non-prisoner application to proceed  
16 *in forma pauperis* or pay the full filing fee for a civil action. The Court now screens  
17 Plaintiff’s FAC under 28 U.S.C. § 1915A and addresses the remaining motion.<sup>1</sup>

18 **I. SCREENING STANDARD**

19 Federal courts must conduct a preliminary screening in any case in which  
20 an incarcerated person seeks redress from a governmental entity or officer or  
21 employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the  
22 court must identify any cognizable claims and dismiss any claims that are  
23 frivolous, malicious, fail to state a claim upon which relief may be granted, or

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25 <sup>1</sup> The Court screens the FAC under the Prison Litigation Reform Act (“PLRA”) because Plaintiff  
26 was still incarcerated when he filed the FAC. *See Olivas v. Nevada ex rel. Dep’t of Corr.*, 856 F.3d  
27 1281, 1282 (9th Cir. 2017) (holding that “28 U.S.C. § 1915A applies . . . to claims brought by  
28 individuals incarcerated at the time they file their complaints”).

1 seek monetary relief from a defendant who is immune from such relief. *See id.*  
2 § 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed.  
3 *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a  
4 claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements:  
5 (1) the violation of a right secured by the Constitution or laws of the United  
6 States, and (2) that the alleged violation was committed by a person acting under  
7 color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

8 In addition to the screening requirements under § 1915A, pursuant to the  
9 Prison Litigation Reform Act (“PLRA”), a federal court must dismiss an  
10 incarcerated person’s claim if “the allegation of poverty is untrue” or if the action  
11 “is frivolous or malicious, fails to state a claim on which relief may be granted,  
12 or seeks monetary relief against a defendant who is immune from such relief.”  
13 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon  
14 which relief can be granted is provided for in Federal Rule of Civil Procedure  
15 12(b)(6), and the court applies the same standard under § 1915 when reviewing  
16 the adequacy of a complaint or an amended complaint. When a court dismisses  
17 a complaint under § 1915(e), the plaintiff should be given leave to amend the  
18 complaint with directions as to curing its deficiencies, unless it is clear from the  
19 face of the complaint that the deficiencies could not be cured by amendment.  
20 *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

21 Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See*  
22 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for  
23 failure to state a claim is proper only if it is clear that the plaintiff cannot prove  
24 any set of facts in support of the claim that would entitle them to relief. *See*  
25 *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir. 1999). In making this  
26 determination, the court takes as true all allegations of material fact stated in  
27 the complaint, and the court construes them in the light most favorable to the  
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1 plaintiff. *See Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).  
 2 Allegations of a *pro se* complainant are held to less stringent standards than  
 3 formal pleadings drafted by lawyers. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980).  
 4 While the standard under Rule 12(b)(6) does not require detailed factual  
 5 allegations, a plaintiff must provide more than mere labels and conclusions. *Bell*  
 6 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation of the  
 7 elements of a cause of action is insufficient. *Id.*

8 A reviewing court should “begin by identifying pleadings [allegations] that,  
 9 because they are no more than mere conclusions, are not entitled to the  
 10 assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal  
 11 conclusions can provide the framework of a complaint, they must be supported  
 12 with factual allegations.” *Id.* “When there are well-pleaded factual allegations, a  
 13 court should assume their veracity and then determine whether they plausibly  
 14 give rise to an entitlement to relief.” *Id.* “Determining whether a complaint states  
 15 a plausible claim for relief . . . [is] a context-specific task that requires the  
 16 reviewing court to draw on its judicial experience and common sense.” *Id.*

17 Finally, all or part of a complaint filed by an incarcerated person may  
 18 therefore be dismissed *sua sponte* if the claims lack an arguable basis either in  
 19 law or in fact. This includes claims based on legal conclusions that are untenable  
 20 (e.g., claims against defendants who are immune from suit or claims of  
 21 infringement of a legal interest which clearly does not exist), as well as claims  
 22 based on fanciful factual allegations (e.g., fantastic or delusional scenarios). See  
 23 *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989); *see also McKeever v. Block*,  
 24 932 F.2d 795, 798 (9th Cir. 1991).

## 25 **II. SCREENING OF FAC**

26 In the FAC, Plaintiff sues Defendants Correctional Officers (“C/O”) Mason  
 27 and Reese for events that took place while Plaintiff was incarcerated at Southern  
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1 Desert Correctional Center (“SDCC”). (ECF No. 18 at 1). Plaintiff brings two  
2 claims and seeks monetary damages. (*Id.* at 4, 6).

3 The FAC alleges the following: On June 10, 2023, Plaintiff was attacked  
4 and assaulted by other inmates. (*Id.* at 4). That night, C/O Mason was on duty  
5 and saw an inmate assault Plaintiff. (*Id.*) When C/O Mason flashed the lights,  
6 the attacking inmate got off Plaintiff. (*Id.*) When Plaintiff walked into the  
7 bathroom, he was assaulted in the bathroom by three inmates. (*Id.*) After C/O  
8 Mason flashed the lights again, those inmates stopped attacking Plaintiff. (*Id.*)  
9 Plaintiff then walked outside and was assaulted by inmates with a homemade  
10 knife, or shank. (*Id.*) C/O Mason witnessed this, walked away, and did not do  
11 anything. (*Id.*) Plaintiff got away and went to his bunk. (*Id.*) Later, Plaintiff went  
12 to the bubble to talk to C/O Mason to seek medical help because Plaintiff could  
13 not see from the assault. (*Id.*)

14 Plaintiff received approximately 10 stabs to his head, face, neck, back,  
15 arms, and hands. (*Id.* at 2). After the stabbing, C/O Reese put Plaintiff in a  
16 holding cell and did not take Plaintiff to a hospital until the next day. (*Id.*)  
17 Plaintiff had a deep puncture wound in his neck and had to use his shirt to stop  
18 the bleeding. (*Id.* at 3).

19 Plaintiff had migraines for months. (*Id.*) Because C/Os Reese and Mason  
20 refused to check on the puncture wounds to Plaintiff’s head and eye, Plaintiff  
21 has permanent eye damage and now wears glasses. (*Id.*) Plaintiff also has  
22 numbness in his arm and disfiguring scars on his face and chest. (*Id.*)

23 Plaintiff brings claims for Eighth Amendment deliberate indifference to  
24 serious medical needs (claim 1) and failure to protect (claim 2). (*Id.* at 3-4).

25       **A. Claim 1**

26       The Eighth Amendment prohibits the imposition of cruel and unusual  
27 punishment and “embodies ‘broad and idealistic concepts of dignity, civilized  
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1 standards, humanity, and decency.” *Estelle v. Gamble*, 429 U.S. 97, 102  
2 (1976). A prison official violates the Eighth Amendment when he acts with  
3 “deliberate indifference” to the serious medical needs of an inmate. *Farmer v.*  
4 *Brennan*, 511 U.S. 825, 828 (1994). “To establish an Eighth Amendment  
5 violation, a plaintiff must satisfy both an objective standard—that the  
6 deprivation was serious enough to constitute cruel and unusual punishment—  
7 and a subjective standard—deliberate indifference.” *Snow v. McDaniel*, 681 F.3d  
8 978, 985 (9th Cir. 2012), *overruled on other grounds by Peralta v. Dillard*, 744  
9 F.3d 1076, 1082–83 (9th Cir. 2014).

10 To establish the first prong, “the plaintiff must show a serious medical  
11 need by demonstrating that failure to treat a prisoner’s condition could result in  
12 further significant injury or the unnecessary and wanton infliction of pain.” *Jett*  
13 *v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotations omitted). To  
14 satisfy the deliberate indifference prong, a plaintiff must show “(a) a purposeful  
15 act or failure to respond to a prisoner’s pain or possible medical need and (b)  
16 harm caused by the indifference.” *Id.* “Indifference may appear when prison  
17 officials deny, delay or intentionally interfere with medical treatment, or it may  
18 be shown by the way in which prison physicians provide medical care.” *Id.*  
19 (internal quotations omitted). When a prisoner alleges that delay of medical  
20 treatment evinces deliberate indifference, the prisoner must show that the delay  
21 led to further injury. See *Shapley v. Nevada Bd. of State Prison Comm’rs*, 766  
22 F.2d 404, 407 (9th Cir. 1985) (holding that “mere delay of surgery, without more,  
23 is insufficient to state a claim of deliberate medical indifference”).

24 The Court finds that Plaintiff states a colorable claim for deliberate  
25 indifference to serious medical needs. Based on the allegations, C/O Mason  
26 witnessed Plaintiff get attacked and stabbed multiple times but did not get  
27 Plaintiff any medical help. Additionally, Plaintiff alleges that instead of getting  
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1 Plaintiff medical help, C/O Reese left Plaintiff in a holding cell overnight while  
2 Plaintiff was bleeding from stab wounds all over his body. This is sufficient to  
3 state a colorable claim on screening and will proceed against Defendants Mason  
4 and Reese.

5       **B. Claim 2**

6       Under the Eighth Amendment, prison officials have a duty to protect  
7 prisoners from violence at the hands of other prisoners. *Farmer v. Brennan*, 511  
8 U.S. 825, 833 (1994). To establish a violation of this duty, the prisoner must  
9 establish that prison officials were deliberately indifferent to serious threats to  
10 the inmate's safety. *Id.* at 834. To demonstrate that a prison official was  
11 deliberately indifferent to a serious threat to the inmate's safety, the prisoner  
12 must show that "the official [knew] of and disregard[ed] an excessive risk to  
13 inmate... safety; the official must both be aware of facts from which the  
14 inference could be drawn that a substantial risk of serious harm exists, and [the  
15 official] must also draw the inference." *Id.* at 837. Prison officials may not  
16 escape liability because they cannot, or did not, identify the specific source of  
17 the risk; the serious threat can be one to which all prisoners are exposed. *Id.* at  
18 843.

19       The Court finds that Plaintiff states a colorable claim for failure to protect  
20 against C/O Mason. Based on the allegations, Mason watched Plaintiff get  
21 attacked and stabbed by multiple inmates at least three times and did nothing  
22 to stop the attacks. This claim will proceed against Defendant Mason.

23       **III. MOTION FOR PRO SE LITIGANT TO FILE ELECTRONICALLY**

24       Plaintiff, who is no longer incarcerated, moves for permission to use and  
25 register for electronic case filing. (ECF No. 20). Plaintiff's motion is on a form  
26 but it is not on this Court's approved form to request use of electronic case filing.  
27 The Court denies Plaintiff's request without prejudice and directs Plaintiff to fill  
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1 out this Court's approved form for "Consent for Electronic Service of  
2 Documents."<sup>2</sup>

3 **IV. CONCLUSION**

4 It is therefore ordered that the application to proceed *in forma pauperis* for  
5 inmates (ECF No. 4) is denied as moot because Plaintiff is no longer incarcerated.

6 It is further ordered that the Clerk of the Court **will send** Plaintiff: (1) the  
7 approved form application to proceed *in forma pauperis* by a non-inmate with  
8 instructions; and (2) the approved form for "Consent for Electronic Service of  
9 Documents."<sup>3</sup>

10 It is further ordered that **within 30 days** from the date of this order,  
11 Plaintiff will either: (1) file a fully complete application to proceed *in forma*  
12 *pauperis* for non-inmates; or (2) pay the full filing fee of \$405.

13 It is further ordered that the motion to file an amended complaint (ECF  
14 No. 19) is granted.

15 It is further ordered that the operative complaint is the FAC (ECF No. 18).

16 It is further ordered that claim 1, alleging Eighth Amendment deliberate  
17 indifference to serious medical needs, will proceed against Defendants Mason  
18 and Reese.

19 It is further ordered that claim 2, alleging Eighth Amendment failure to  
20 protect, will proceed against Defendant Mason.

21 It is further ordered that the motion for pro se litigant to file electronically  
22 (ECF No. 20) is denied without prejudice.

23 It is further ordered that, if Plaintiff does not file an application to proceed  
24 *in forma pauperis* for non-inmates or pay the full \$405 filing fee **within 30 days**

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26 <sup>2</sup> The Clerk of the Court will send Plaintiff a courtesy copy of this form.  
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<sup>3</sup> The form can be found on this Court's website at <https://www.nvd.uscourts.gov/wp-content/uploads/2020/04/Consent-by-Pro-Se-Non-Prisoner-to-receive-NEFs-4-15-20.pdf>.

1 from the date of this order, the Court will dismiss this action without prejudice.

2 If Plaintiff timely complies with this order, the Court will issue a separate  
3 order staying the case for 90 days and referring this case to the Inmate Early  
4 Mediation Program.

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6 DATED: February 10, 2025.

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10 ANNE R. TRAUM  
11 UNITED STATES DISTRICT JUDGE

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